

No. _____

STATE OF TEXAS,
Plaintiff,

V.

INTERNATIONAL ASSOCIATION OF
BENEFITS, F/K/A INTERNATIONAL
ASSOCIATION OF BUSINESSES,
A/K/A IAB,
Defendant.

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IN THE DISTRICT COURT OF

DALLAS COUNTY, T E X A S

_____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, STATE OF TEXAS, acting by and through the Attorney General of Texas, Greg Abbott, complains of INTERNATIONAL ASSOCIATION OF BENEFITS, F/K/A INTERNATIONAL ASSOCIATION OF BUSINESSES, A/K/A IAB, Defendant, or "IAB," and for cause of action would respectfully show as follows:

DISCOVERY CONTROL PLAN

1. The discovery in this case is intended to be conducted under Level 2 pursuant to TEX. R. Civ. P. 190.2(b)(3); 190.3(a).

JURISDICTION

2. This action is brought by Attorney General Greg Abbott, through his Consumer Protection and Public Health Division, in the name of the State of Texas and in the public interest under the authority granted him by § 17.47 of the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. § 17.41 *et seq.* (Vernon 2002 and Supp. 2004) ("DTPA") upon the ground that Defendant has engaged in false, deceptive and misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by, §§ 17.46(a)

and (b) of the DTPA. Additionally, Defendant has violated the Texas Telemarketing Disclosure and Privacy Act (“TTDPA”) by sending facsimile solicitations that do not comply with notice provisions of the Act. TEX. BUS. & COM. CODE ANN. § 44.151 (Vernon Supp. 2003).

NATURE OF DEFENDANT’S OPERATIONS

3. IAB advertises and sells what it claims are health care plans to consumers in Texas, including Dallas County, and throughout the United States. IAB advertises and sells through websites, unsolicited facsimile transmissions, unsolicited electronic mail transmissions, print advertisements, and telemarketing. IAB sends unsolicited faxes to consumers advertising “Association Health Care,” stating on the same advertisement: “[t]his is not a discount plan.” Consumers who respond to IAB’s advertisements are told that 8 out of every 10 doctors participates in the IAB plan, and that doctors’ visits are just \$35.00 a visit. Consumers are told that IAB covers 80% of any additional health care costs. Consumers are also told that in addition to the \$35.00 co-pay for doctors’ visits, IAB offers an additional “benefit” of a \$25.00 reimbursement by IAB per doctor visit. IAB represents that its health care plan has an “accident benefit” which pays up to \$5000.00 per accident or emergency room visit. IAB will not send the consumer an information packet or a list of doctors who participate in the plan until the consumer signs up, and gives IAB a credit card or bank account to bill. IAB does not inform the consumer that IAB has a three-day period of time in which a consumer can cancel and receive a refund. Consumers typically receive an information packet from IAB 10 to 14 days after signing up and paying between \$189.95 and \$219.90 for the plan.

DEFENDANT

4. Defendant International Association of Benefits is a District of Columbia corporation. Defendant International Association of Benefits can be served with process by serving its registered agent in Texas, George R. Katosic, 300 North Coit, Suite 1050, Richardson, Texas 75080.

VENUE

5. Venue of this suit lies in Dallas County, Texas for the following reasons:
- A. Under TEX. CIV. PRAC. & REM. CODE §15.001, venue is proper because all or a substantial part of the events or omissions giving rise to the causes of action alleged herein occurred in Dallas County, Texas; and
 - B. Under the DTPA §17.47(b), venue is proper because Defendant has done business in Dallas County, Texas.

PUBLIC INTEREST

6. Because Plaintiff STATE OF TEXAS has reason to believe that Defendant has engaged in, and will continue to engage in the unlawful practices set forth below, Plaintiff STATE OF TEXAS has reason to believe that Defendant has caused, and will cause adverse effects to legitimate business enterprise which conducts its trade and commerce in a lawful manner in this State. Therefore, the Consumer Protection and Public Health Division of the Office of the Attorney General of Texas believes and is of the opinion that these proceedings are in the public interest and at least seven days prior to instituting this action contacted Defendant to inform it in general of the alleged unlawful conduct.

TRADE AND COMMERCE

7. Defendant is engaged in trade and commerce as that term is defined by § 17.45(6) of the DTPA.

ACTS OF AGENTS

8. Whenever in this Petition it is alleged that Defendant did any act, it is meant that:
- A. Defendant performed or participated in the act; or
 - B. Defendant's officers, agents, or employees performed or participated in the act on behalf of and under the authority of the Defendant.

STATEMENT OF FACTS

9. IAB markets and sells its "health care plan" through websites, facsimile transmissions, electronic mail transmissions, print advertisements, and telemarketing throughout Texas and the rest of the United States.

10. In marketing and advertisements, IAB represents to consumers that its health care plan covers the entire family for a flat rate of \$59.95 to \$119.95 per month.

11. In marketing and advertisements, IAB represents to consumers that its health care plan is not a discount plan.

12. IAB represents to consumers that benefits of the health care plan include \$35.00 doctor's visits at eight out of every ten doctors.

13. IAB represents to consumers that IAB will pay up to 80% of any additional health care costs incurred by the consumer.

14. IAB represents to consumers that there is a \$5000.00 accident benefit, which pays up to \$5000.00 for accidents and emergency room visits. Consumers are told that there is no limit on

the number of times they use this benefit, and that their only responsibility is a \$100.00 deductible per accident.

15. IAB represents to consumers that the health care plan includes a tiered prescription drug benefit, in which the majority of prescription drugs cost \$10, \$20, or \$40 per prescription. IAB represents that the minority of drugs that do not fall within one of the three tiers are deeply discounted under the plan.

16. IAB represents to consumers that IAB can not send them additional written information regarding the plan unless the consumer signs up and pays an enrollment fee and the first month's "premium" for the plan, but that the consumer can cancel the plan within 30 days if they are not completely satisfied, and receive a full refund.

17. Consumers typically receive the written information on the health care plan 10 to 14 days after signing up and paying the enrollment fee and first month's premium. This amount is typically between \$189.95 and \$219.90.

18. Many consumers who read through the written material and discover that the health care plan is not insurance, and that the benefits represented to them do not exist, call or write IAB to inform them of these facts, and to cancel the plan and receive a refund.

19. IAB represents to consumers who attempt to cancel and receive a refund within the 30 day cancellation period that no refund is due, because the refund period is actually only for the 72 hours after signing up.

20. IAB responds to complaints that the plan was misrepresented to consumers as insurance, or as having benefits that it does not have, by stating that IAB regrets that there was

“miscommunication” between the IAB representative and the consumer, but nevertheless, IAB declines to refund the consumers’ money.

21. IAB responds to complaints that the cancellation with full refund period was misrepresented as 30 days, or not disclosed at all, by stating that IAB regrets that there was “miscommunication” between the IAB representative and the consumer, but nevertheless, IAB declines to refund the consumers’ money.

22. IAB represents to consumers that have insurance that IAB’s plan has the same or superior benefits to the consumer’s current insurance, but costs far less. Consumers have relied on these representations and cancelled their health insurance upon signing up with IAB. These consumers have paid significant penalties to re-enroll with their prior health insurance, or have been unable to find health insurance because of a pre-existing condition.

23. Consumers who use the plan to go to doctors that IAB represents accept the plan have been told by those doctors that they are not familiar with IAB. Doctors who send bills to IAB to be reimbursed are told that IAB is not insurance, and therefore, IAB does not pay claims. Doctors are instructed to collect the money owed for their services from the consumer.

VIOLATIONS OF DTPA

24. Plaintiff, the State of Texas, incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

25. IAB, as alleged and detailed above, has in the course of trade and commerce engaged in false, misleading and deceptive acts and practices declared unlawful in §§ 17.46(a) and (b) of the DTPA. Such acts include:

- A. Engaging in false, misleading or deceptive acts or practices in violation of § 17.46(a) of the DTPA;
- B. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services in violation of § 17.46(b)(2) of the DTPA;
- C. Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another in violation of § 17.46(b)(3) of the DTPA;
- D. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not in violation of § 17.46(b)(5) of the DTPA;
- E. Making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions in violation of § 17.46(b)(11) of the DTPA;
- F. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law in violation of § 17.46(b)(12) of the DTPA; and
- G. Failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction which the

consumer would not have entered into had the information been disclosed in violation of § 17.46(b)(24) of the DTPA.

VIOLATIONS OF THE TTDPA

26. Plaintiff, the State of Texas, incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

27. Section 141.151 of the TTDPA requires facsimile solicitations to include the correct and complete name of the person making the facsimile solicitation and the street address of the location of the person's place of business. By sending out facsimile solicitations that did not include the correct and complete name of the person making the facsimile solicitations and the street address of the location of the person's place of business, IAB has violated § 44.151(1) of the TTDPA.

PRAYER

28. By reason of the acts and practices described herein above, IAB has violated and will continue to violate the laws as herein alleged unless enjoined by this Honorable Court.

29. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that IAB be cited according to law to appear and answer herein; that after due notice and hearing a temporary injunction be issued; and that upon final hearing a permanent injunction be issued, restraining and enjoining IAB, its officers, agents, servants, employees and attorneys and any other person in active concert or participation with IAB, from engaging in the following acts or practices:

- A. Failing to disclose in a clear and conspicuous manner in all oral and written communications to consumers that IAB's plan is not insurance.

- B. Using terms of art from insurance in oral and written communications to consumers regarding IAB's plan, including but not limited to, the following terms:
- i. Co-pay;
 - ii. Benefit(s);
 - iii. Pre-existing conditions; and
 - iv. Coverage.
- C. Representing to consumers the cost of any health care service with the IAB plan, unless the following conditions are met:
- i. There is a factual basis for the representation;
 - ii. The entire cost of the health care service is disclosed; and
 - iii. Any representation regarding any portion of the cost which will be paid or reimbursed by IAB has a factual basis.
- D. Representing that health care providers will accept IAB's plan unless IAB has, at some point in the prior twelve months, confirmed in writing with the health care provider the following information:
- i. The provider's current name, address, and telephone number;
 - ii. That the provider is accepting new patients; and
 - iii. That the provider has agreed to accept IAB's members and bill those members for health care services according to a certain fee schedule.
- E. Representing to consumers that there are health care providers who participate in the program in the consumer's local area unless IAB has made

a list of all providers reasonably available for inspection by consumers prior to any purchase.

F. Representing to consumers that members of IAB's plan can access hospital providers except under the following conditions:

i. Each time an oral or written representation regarding access to hospital providers is made, IAB clearly and conspicuously discloses all material conditions, restrictions, and costs associated with access to the hospital providers, including but not limited to:

- a. Waiting periods;
- b. Pre-certification and/or pre-qualification requirements; and
- c. Deposit or pre-payment requirements.

ii. There are no conditions, restrictions, or costs associated with accessing hospital providers that would prevent IAB's average member from accessing hospital providers.

G. Assessing or collecting payment of any kind from consumers unless and until IAB is in receipt of a signed and dated contract to purchase IAB's plan from the consumer.

i. In order to be in compliance with this term, the signed and dated contract to purchase IAB's plan must include:

- a. A fair and accurate description of IAB's plan; and
- b. Clear and conspicuous disclosures of any material terms, conditions, and/or restrictions regarding IAB's plan.

- H. Assessing a “one-time,” “enrollment,” “administrative,” or “sign-up” fee unless and until the following conditions are met:
 - i. Any such fee, and its material terms and conditions, are clearly and conspicuously disclosed to consumers before assessing the fee. Such disclosures shall include, but not be limited to, the following:
 - a. The amount of the fee;
 - b. The purpose of the fee; and
 - c. Whether or not the fee is refundable.
 - ii. Any such fee must be a nominal amount, related to costs incurred by IAB in enrolling consumers in its plan.
- J. Representing that IAB offers a “money-back” or “satisfaction” guarantee unless all monies paid by consumers to IAB, including but not limited to, enrollment fees and monthly fees, are refundable under the guarantee.
- K. Requiring consumers to cancel the plan in writing unless IAB clearly and conspicuously discloses in all written and oral communications to consumers, that written cancellations are required. Such disclosures shall include:
 - i. The address to which written cancellations should be sent; and
 - ii. The fax number to which written cancellations should be sent, if facsimile notification is an accepted means of cancellation.
- L. Failing to cancel the plan for a consumer if the consumer has manifested an intent to cancel.
- M. Using customer testimonials, unless:

- i. All representations regarding IAB's plan have a factual basis;
 - ii. The full name of the person making the testimonial is included in all communications of the testimonial to consumers;
 - iii. All material relationships, whether current or past, between IAB and the person making the testimonial are clearly and conspicuously disclosed in all oral and written communications of the testimonial to consumers; and
 - iv. All representations in the testimonial regarding price reductions, savings, and/or discounts received on health care services are in reference to price reductions, savings, and/or discounts received solely through the use of IAB's plan, and not the result of combining IAB's plan with a health insurance plan, or any other plan.
- N. Representing to consumers that the IAB plan is commensurate to, superior to, or a replacement for health insurance.
- O. Sending facsimile solicitations which do not include:
- i. The correct and complete name of the person making the facsimile solicitation and the street address of the location of the person's place of business; and
 - ii. A toll-free or local exchange accessible telephone number of the person that:
 - a. Is answered in the order in which the calls are received by an individual capable of responding to inquiries from recipients

of facsimile solicitations at all times after 9 a.m. and before 5 p.m. on each day except Saturday and Sunday; or

- b. Automatically and immediately deletes the specified telephone number of the recipient.

30. Plaintiff further requests that upon final hearing this Court award such relief as the Court finds necessary to redress injury to consumers including, but not limited to, restitution of monies paid by consumers, and further orders Defendant to pay to the State of Texas:

- A. Restitution of monies paid by consumers;
- B. Disgorgement of any ill-gotten gains;
- C. Civil penalties of up to \$20,000.00 per violation of the DTPA;
- D. Civil penalties of up to \$1000.00 per violation of the TTDPA;
- E. Pre-judgment and post-judgment interest on all awards of restitution, damages, or civil penalties, as provided by law; and
- F. All costs of Court, costs of investigation, and reasonable attorney's fees pursuant to TEX. GOVT. CODE ANN. § 402.006(c).

31. Plaintiff further prays for such other relief to which Plaintiff may be justly entitled.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

BARRY R. McBEE
First Assistant Attorney General

EDWARD D. BURBACH
Deputy Attorney General for Litigation

PAUL D. CARMONA
Chief, Consumer Protection and Public Health
Division

NANETTE DINUNZIO
State Bar No. 24036484
Assistant Attorney General
Consumer Protection and Public Health
Division
P.O. Box 12548
Austin, Texas 78711
(512) 475-4654 (telephone)
(512) 473-8301 (facsimile)